

The Honorable Ricardo Martinez

UNITED STATES DISTRICT COURT
OF WASHINGTON

JULIE DALESSIO, an individual,

Plaintiff,

v.

UNIVERSITY OF WASHINGTON,

Defendant.

No. 2:17-cv-00642-RSM

DEFENDANT UNIVERSITY OF
WASHINGTON'S RESPONSE TO
PLAINTIFF'S MOTION TO APPOINT
COUNSEL & STATEMENT OF MERIT
OF CLAIM

NOTE ON MOTION CALENDAR:
May 26, 2017

I. INTRODUCTION

Defendant provides the following response to Plaintiff's "Statement For Merit of Claim" [Dkt. #8-1] filed May 5, 2017 in support of her Motion to Appoint Counsel [Dkt. #8]. Plaintiff's Statement regarding the merits of her claim provides erroneous conclusory assertions regarding the law and incorrect factual statements. Plaintiff does not establish exceptional circumstances for court-appointed counsel.

II. LEGAL AUTHORITY

Although courts, under 28 U.S.C. § 1915(e)(1), may request counsel to represent a party proceeding *in forma pauperis*, they may do so only in exceptional circumstances. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331, (9th Cir.1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir.1984); *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir.1980). A finding of

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1 exceptional circumstances requires an evaluation of both the likelihood of success on the
 2 merits and the ability of the plaintiff to articulate his or her claims pro se in light of the
 3 complexity of the legal issues involved. *Wilborn*, 789 F.2d at 1331.

4 **A. Plaintiff is Not Likely to Succeed on the Merits.**

5 Plaintiff asserts a multitude of claims, most of which fail on their face and should be
 6 dismissed on Defendant's Motion for Summary Judgment, which Defendant plans to file
 7 soon after the conference setting the case schedule. For example, Plaintiff pursues claims
 8 under the Freedom of Information Act (FOIA) despite never having made a FOIA request
 9 and the fact that the University of Washington is not a federal agency. Plaintiff also
 10 pursues claims under HIPAA and FERPA despite clear legal authority that neither creates a
 11 private cause of action. Plaintiff's Public Records Act (PRA) claim fails because the PRA
 12 only provides for statutory damages for an agency's failure to produce documents, which
 13 was not the case here. Any corresponding state law claims fail because agencies are
 14 entitled to good faith immunity against any cause of action, and Plaintiff cannot show any
 15 evidence that Defendant acted in bad faith in accidentally failing to redact Plaintiff's social
 16 security number on one page out of hundreds produced. Plaintiff's breach of contract claim
 17 fails because (1) settlement agreements must be produced in response to requests under the
 18 PRA, and (2) the settlement agreement in this case expressly acknowledged the
 19 University's right to release the agreement or related documents pursuant to any legal
 20 obligation, including a valid public records request. Finally, despite the fact that Plaintiff
 21 voluntarily settled any employment disputes she had with the University more than fourteen
 22 years ago (separation agreement reached in 2003), Plaintiff attempts to revive those claims
 23 without any legal basis for doing so and more than a decade beyond any applicable statute
 24 of limitations. Accordingly, Plaintiff is not likely to succeed on any of her claims, and
 25
 26

therefore fails prong one of the *Wilborn* test.¹

B. Plaintiff is Competent to Articulate Her Attempted Legal Theories Regardless of Lack of Merit.

Plaintiff's claims suffer from legal and technical deficiencies (as well as a lack of organization), but that does not mean that she is unable to articulate them. In fact, Plaintiff cites both case law and statutes in support of her claims. Plaintiff has also demonstrated knowledge of the court rules and deadlines, and has even filed a jury demand. None of Plaintiff's claims are legally complex, and the facts are restricted to the University's response to just four records requests pursuant to Washington's Public Records Act, RCW Ch. 42.56. Therefore, Plaintiff cannot meet either prong of the *Wilborn* test.

III. CONCLUSION

Defendant requests the court consider the foregoing in conjunction with its decision regarding court-appointed counsel.

DATED: May 24, 2017

KEATING, BUCKLIN & McCORMACK, INC., P.S.

By: /s/ Jayne L. Freeman

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¹ Plaintiff's statement regarding the merits of her claims contains strictly conclusory assertions regarding the facts and the law. Defendant denies them as set out in Defendant's Answer, *Dkt. 4*.

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Attorneys for Pro-Se Plaintiff

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DATED: May 24, 2017

/s/ Jayne L. Freeman

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